

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

OCTOBER 1, 1996

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0863

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE
GUARDIANSHIP AND PROTECTIVE
PLACEMENT OF FLORENCE S.:
DOUGLAS COUNTY,**

Petitioner-Respondent,

v.

FLORENCE S.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Douglas County:
MICHAEL T. LUCCI, Judge. *Reversed.*

LaROCQUE, J. Florence S. appeals an order continuing her protective placement for a year. She challenges the failure to conduct the annual review hearing within a year of the original placement. This court agrees that the failure to conduct the hearing violated her right to due process and equal protection and reverses the order continuing placement.

Florence's original placement occurred pursuant to an order filed June 6, 1994. The required annual hearing to determine whether the placement

should continue as mandated by *State ex rel. Watts v. Combined Community Services Bd.*, 122 Wis.2d 65, 362 N.W.2d 104 (1985), did not take place until almost sixteen months later, on September 29 and October 3, 1995.

The County takes the position that *Watts* did not contemplate a dismissal for failure to conduct the required annual hearing strictly within a twelve-month time frame. It rejects cases that Florence cites as authority for the proposition that failure to meet time limits deprives the trial court of competency to proceed.

Due process is a flexible concept and not static, and depends upon the interests involved and the nature of subsequent proceedings. *Lessard v. Schmidt*, 349 F. Supp. 1078, 1086 (E.D. Wis. 1972). While the County is correct in noting that *Watts* did not establish the consequences of failing to provide an annual review, this court concludes that due process would require a review hearing to be held within a period less than that provided here. The record does not reveal the reason for the length of the delay following the expiration of Florence's original commitment. The order entered appointing a guardian ad litem for the annual review was not made until August 18, 1995. The GAL's report filed on September 6, 1995, indicated doubt concerning whether Florence was still a proper subject for placement.

Further, while the analogy between the cases Florence cites is not perfect, there is a sufficient nexus to conclude those cases are not irrelevant. *In re G.O.T.*, 151 Wis.2d 629, 445 N.W.2d 697 (Ct. App. 1989), held that the trial court lost competency to proceed with the hearing to extend a ch. 51, STATS., (mental health) commitment when the hearing was not held within the statutory six months after the initial extension.

Similarly, there is an equal protection problem if persons subject to continued treatment following a mental commitment are required to have strict compliance with statutory time limits while persons protectively placed are not. This court concludes that the procedure followed in this case compels the dismissal of the proceedings against Florence and reversal of the recommitment order.

Because the preceding opinion resolves the appeal, it is unnecessary to address Florence's challenge to the sufficiency of the evidence to continue placement and to the decision regarding the least restrictive placement.

By the Court.—Order reversed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.